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EXTRAORDINARY

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NEW DELHI, FRIDAY, MAY 24, 1957/JYAISTHA 3, 1879

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 21st May, 1957

S.R.O. 1729.—In pursuance of the provisions of sub-section (1) of section 86 of the Representation of the People Act, 1951, the Election Commission hereby publishes a copy of the Election Petition No. 254 of 1957, presented to the Commission on the 24th April, 1957, under section 81 of the said Act, by Shri S. Radhakrishnan, son of Subramania Padayachi, resident of Chitharasur, Pelur Post, Cuddalore Taluk, South Arcot District, Madras State, calling in question the election to the House of the People from the Cuddalore constituency of that House of Shri T. D. Muthukumaraswami Naidu, resident of 41, Sitaram Nagar, Cuddalore N. T. South Arcot District, Madras State.

Received by Registered Post this the twentyfourth day of April One Thousand Nine Hundred and Fifty Seven.

The 24th April, 1957.

(Sd/-) **DIN DAYAL**, Under Secy.,

Election Commission, India.

BEFORE THE ELECTION COMMISSION OF INDIA

ELECTION PETITION No. 254 OF 1957.

S. Radhakrishnan.—*Petitioner.*

vs.

1. T. D. Muthukumaraswami Naidu,
2. N. D. Govindaswami Kachirayar.
3. R. Sriirangachari, B.A., Returning Officer for the Cuddalore Parliamentary Constituency.—*Respondents.*

Election Petition under Section 80 & 81 of the Representation of the Peoples Act, 1950, Act 43 of 1950.

The Petitioner begs to state as follows:—

1. The Petitioner is the son of Subramania Padayachi, and is residing at Chitharasur, Palur Post, Cuddalore Taluk, South Arcot District, Madras State.
2. The first respondent is residing at 41, Sitaram Nagar, Cuddalore N. T. South Arcot District, Madras State.

The second respondent is residing at Nadu Thittu, Thiagavalli Post, Cuddalore Taluk, South Arcot District, Madras State.

The third respondent is the personal Assistant to the Collector, South Arcot District and Returning Officer, Cuddalore Parliamentary Constituency, Cuddalore N.T. and is having his office at the Office of the Collector for South Arcot District, Cuddalore N.T., South Arcot District, Madras State.

3. There was a general election for the House of the People, that is, the Lok Sabha in March, 1957 and the petitioner herein stood as a Congress Candidate for election to the said House of the People, that is the Lok Sabha, from the Cuddalore Constituency in the State of Madras, which consisted of the Cuddalore, Ulundurpet, Villupuram, Single Member and Nellikappam Double Member Constituencies of the Madras Legislative Assembly. There was two other candidates who also competed for the same seat in the Lok Sabha. The respondents 1 and 2 herein are the aforesaid candidates who stood in rivalry to the petitioner herein.

4. The election took place on 6-3-1957 and the 3rd respondent herein was the Returning Officer for the said Parliamentary Constituency.

5. Prior to the date of polling the Returning Officer served on the petitioner herein a notice dated 4-2-1957 setting out the programme for counting of the votes of the aforesaid Constituency. It will be seen from the said notice that the dates fixed for counting were from 11-3-1957 to 14-3-1957 from 9 A.M. every day and that the counting was to take place at Cuddalore. The notice also intimated that the counting was expected to be completed on 14-3-1957.

6. The Returning Officer also served another notice on the petitioner dated 9th February 1957 purporting to be in pursuance of sub-rule (1) of Rule 53 of the Representation of the People (Conduct of Election and Election Petitions) Rules 1956 fixing the 11th, 12th, 13th and 14th days of March 1957 from 9 A.M. as the date and time for the counting of votes for the said constituency in the Collector's Office at Cuddalore, N.T.

7. After the polling was over the said Returning Officer sent a memo dated 8th March 1957 to the petitioner herein reminding him that the counting would commence on 11th March 1957 at 9 A.M. at the aforesaid place and that boxes of six polling stations would be counted at a time and that the petitioner might appoint six counting agents.

8. The petitioner accordingly appointed his agents for supervising the counting of the votes by the returning officer.

9. During the counting the petitioner's agents were not allowed to stir out of their seats while the counting of votes was being done, with the result that the petitioner has been deprived of his legal rights to exercise his vigilance over the counting. There is no knowing as to the gravity of the consequences of this attitude of the Returning Officer and the petitioner apprehends that as a result of the denial of the said legal rights many irregularities and illegalities were allowed to pass master; and the petitioner could only discover and bring to light the said irregularities and illegalities and other prejudices that have been caused to the petitioner in the course of the hearing and trial of this petition.

10. The petitioner and his agent who became apprehensive of the risk and danger involved in the procedure and process adopted by the Returning Officer demanded orally recounting so as to enable him to bring home to the Returning Officer the various irregularities connected with the election and the counting of votes. The petitioner was asked to put in a written application by the Returning Officer for demanding recounting.

11. Accordingly the petitioner submitted a written application, but the Returning Officer returned the same to the petitioner with an endorsement that the petitioner should state the grounds for the recounting. Accordingly the petitioner again presented an application under Sub Rule (2) of Rule 64 of the Representation of the People (Conduct of Elections and Election Petitions) Rule 1956, stating therein the reasons for recounting.

12. The Returning Officer received the above application in time, but refrained from dealing with it and passing any orders thereon. He designedly put it in cold storage and became interested in announcing the result without discharging his duties, *vis-a-vis*, disposal of the petitioner's application aforesaid demanding a recounting.

13. After conveniently announcing the result and declaring the 1st respondent as successful candidate by a majority of 39 votes. The Returning Officer seems to have felt that there must be an official disposal of the request of the petitioner for recounting. But instead of dealing with the application filed before him as

per his own requisition, he seems to have thought that it was safe to give a dog a bad name and hang it. Accordingly he directed some officer on his behalf by name M. Pranappan to send a letter to the petitioner the next day after the announcement of the result by post asking the petitioner to send back the first petition returned by the Returning Officer as not in accordance with the rules, with a Court fee of Re. 1/- affixed thereto and stating that the petition would be taken up for consideration only after the petitioner's compliance with the requisition regarding the affixture of the Court fee stamp. The petitioner respectfully submits that this demand of the Returning Officer was unjustified and is besides one made the day after the fair for which the Returning Officer was wholly responsible. The proper petition before him was the application filed on 12th March, 1957 sufficiently in advance before the announcement of the results setting out the reasons for recounting as per the requisition of the Returning Officer himself. The said application was thus left undisposed of for reasons best known to the Returning Officer himself though that was the application that was on file and had to be disposed of.

14. The petitioner respectfully submits that as per Rule 63(3) of the aforesaid Rules it was a mandatory obligation on the part of the Returning Officer on an application being made to him after the completion of the counting and announcement of the same but before the announcement of the result, to decide the application for recounting and either allow the application in whole or in part or rejecting in toto if it appears to him to be frivolous and unreasonable.

15. The Petitioner further submits that every decision of the Returning Officer under sub-Rule (3) of the Rule aforesaid should not only be in writing but also contain the reasons therefor and that it was his duty to decide it before the announcement of the results, by him.

16. The Petitioner respectfully submits that the above Rule forms part and parcel of the Act and the failure of the Returning Officer to deal with the same before the announcement of the result constitutes a violation of a mandatory statutory provision entailing the setting aside the entire election.

17. The petitioner submits that after the receipt of the aforesaid memo dated 13th March 1957 from Sri Pranappan the petitioner wrote back to the Returning Officer on 21st March 1957 drawing his attention that the petitioner had already filed a fresh petition with full grounds for recounting as per the direction of the Returning Officer himself and that it was otiose to take the originally returned petition into consideration at all. The petitioner also sent to the Returning Officer along with the aforesaid letter the necessary court fee of Re. 1/-.

18. The petitioner submits that no court fee is payable on the application and the demand of the Court fee was illegal. In any event the petitioner submits that the Returning Officer should have then and there demanded and collected Court fee due if any, from the petitioner or returned the application to enable the applicant to affix the Court fee and validate the application if need be.

19. The retention of the application without dealing with it in the circumstances amounts to short practice if the petitioner may go so without meaning any disrespect in the context and circumstances obtained in this case.

20. The Returning Officer thereafter did not allow the grass to grow under his feet in answering the petitioner by a memo dated 22nd March 1957 under the caption 'Election immediate' stating that as the declaration of the result was over the petition for recounting could not be entertained. The Returning Officer did not also fail to refer to the relevant section namely, Section 80 of the Representation of the Peoples Act and advised the petitioner to proceed if so advised under section 81 of the said Act.

21. The Petitioner respectfully submits that as stated before the Returning Officer failed to exercise his jurisdiction and discharge his mandatory duties by not passing any order on the petitioner's written application dated 12th March 1957 which still lies with the Returning Officer as an undisposed matter, and that he was only drawing a red herring across the path by attempting to resuscitate a dead or dud petition.

22. The postal ballot papers were counted behind the back of the petitioner or his agents without affording any opportunity to the petitioner or his agents to find out the illegalities and irregularities.

23. The Returning Officer sealed the postal ballot papers without making his endorsements thereon and then broke open the seal behind the back of the petitioner and his agents and put his initials on the said postal ballot papers and again sealed them in a cover — a procedure potential of great risks and dangers.

24. The petitioner submits that there has been a violation of the Rules and regulations in more than one respect by the Returning Officer as a consequence of which the election has been vitiated to a degree.

25. The petitioner also makes the following charges in the matter of the aforesaid election and submits that—the election is liable to be set aside on the foot thereof:—

- (1) The ballot box contains votes of persons who were dead before the election date.
- (2) The ballot box contains also the votes of persons whose names had been deleted from the voters' list and who had no franchise for exercise.
- (3) There were also impersonations which will be proved in the course of the trial.
- (4) There are several instances of votes having been improperly rejected and there are also several instances of votes having been improperly received to tilt to the balance.
- (5) Quite contrary to all rules and fairplay the Village Munsif of Marun-gur village of Cuddalore Taluk took on active part in the election as against the petitioner and in favour of the first respondent, as a consequence of which there was no free election in that area.
- (6) The Village Munsif of Singrikoil (Rajaram Reddiar), Cuddalore Taluk also took an active part in support of the candidature of the first respondent and was canvassing in favour of the first respondent and while he was actually on duty at the entrance of the polling booth at Singrikoil. He was also threatening and dissuading the voters who were found to enter the polling booth with the identity slips bearing the symbols of the petitioner. A written complaint was also preferred against such objectionable behaviour of the said Village Munsif of Singrikoil and the said Village Munsif was also directed to leave the polling booth after lunch time; but after the mischief was done.
- (7) The Talayari of Manapathur village of Panruti Firka of Cuddalore Taluk was found to be announcing by tom tom previous to the election date that all should cast their votes in the Elephant Box belonging to the first respondent. The said Talayari on being questioned about his improper conduct replied that he was only carrying out the orders of the Village Munsif of Manapathur.

26. The petitioner has deposited Rs. 1000/- as required by the Rules and is enclosing herewith the receipt of the Reserve Bank of India, dated 22nd April 1957 for the said deposit.

27. The Petitioner in the above circumstances therefore humbly prays:

- (1) that the election of the first respondent be declared void;
- (2) that a recounting be ordered after hearing the applicant;
- (3) that the petitioner may be declared elected as a result of the said re-counting if as a result of the recounting he becomes entitled thereto; and
- (4) that all further consequential and necessary orders and directions may be given.

Dated this 23rd day of April, 1957.

S. RADHAKRISHNAN,

Petitioner..

I, S. Radhakrishnan, the petitioner above named, do hereby declare that what is stated in paragraphs 1 to 26 above are true to my knowledge except the matters stated to be on information and the particular charges which I believe to be true.

Dated at Madras this 23rd day of April, 1957.

S. RADHAKRISHNAN,

Petitioner.

[No. 82/254/57.]

By Order,

DIN DAYAL, Under Secy.

ERRATUM

The Issue No. of the Gazette of India Extraordinary Part II—Sec. 3, dated the 18th May 1957 (Page No. 1639/3), containing S.R.O. 1645-E, an order of the Ministry of Information and Broadcasting, should be "249-B" instead of "245-B".

